

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Denise Darsell Day
SSN XXX-XX-6129

CASE NO. 04-43755 NCD

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

TO: Debtor and other entities specified in Local Rule 3015-3.

1. Select Portfolio Servicing, Inc. f/k/a Fairbanks Capital Corporation (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on September 2, 2004, before the Honorable Nancy C. Dreher in Courtroom 7 West at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on September 1, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than August 30, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed July 7, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$276,250.00, as evidenced by that certain Promissory Note dated August 29, 2000, together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated August 29, 2000, executed by Denise D. Day, a single woman, recorded December 13, 2000, as Document No. 279447, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in her pre-petition monthly mortgage payments to Secured Creditor for the months of January, 2004 through July, 2004, in the total amount of \$38,304.45, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 40 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. The value of the property as scheduled by Debtor is \$315,000.00 subject to Secured Creditor's mortgage in excess of \$325,640.37.

11. The plan, as proposed, is not made in good faith by Debtor.

. . .

. . .

12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 24th day of August, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, Minnesota 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO
COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT
PURPOSE.

May. 6. 2004 2:36PM UNIVERSAL TITLE

No.9655 P. 7

Registration tax hereon of \$6.35, paid
this 12th day of May 2004
Treasurer's Receipt No. 10080024

Michael J. Walker
County Treasurer

David Lundgren
County Auditor

Jeff Hultman

Document No.

A278447



OFFICE OF THE
COUNTY RECORDER
CARVER COUNTY, MINNESOTA

Filing Fee: \$ 25.50 Check# 32501

Certified filed and recorded on 12-13-2000 at 03:00 ☐ AM ☒ PM



Carl W. Kestler, Jr.
County Recorder

(Space Above This Line For Recording Date)

00080024

MORTGAGE

THIS MORTGAGE ("Security Instrument") is made on August 29, 2000. The Mortgagor is
DENISE D DAY
A SINGLE WOMAN

("Borrower"). This Security Instrument is given to Specialty Mortgage Corporation
d/b/a SMC Mortgage Corporation, which is organized and existing under the laws of
The State of New Mexico
and whose address is 6400 Uptown Blvd, NE, Suite 200E
Albuquerque, NM 87110 ("Lender").

Borrower owes Lender the principal sum of Two Hundred Seventy Six Thousand Two Hundred Fifty and
00/100 Dollars (U.S. \$ 276,250.00). This debt is evidenced by Borrower's note
dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not
paid earlier, due and payable on September 1, 2030 and for interest at the yearly rate of 12.400
percent. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and
all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under para-
graph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements
under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender,
with power of sale, the following described property located in CARVER County, Minnesota:

1/5 Corner Bluffs

which has the address of 301 BLUFF RD CARVER
Minnesota 55215 ("Property Address");
(Zip Code)

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances,
and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security
Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mort-
gage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower
warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of
record.

THIS SECURITY INSTRUMENT contains uniform covenants for national use and non-uniform covenants with
limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due
the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.
2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall
pay to Lender on the day monthly payments are due under the Note, until the note is paid in full, a sum ("Funds") for:
(a) yearly taxes and assessments which may attach prior to, over this Security Instrument as a lien on the Property; (b) yearly
leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly
flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower

MINNESOTA - Single Family - Family Use/Private Use UNIFORM INSTRUMENT

MINNCONVTO.FAM (6/96) (Rev. 5/2000)

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Form 3824 8/90

20-3355

EX-1000-0000

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Denise Darsell Day
SSN XXX-XX-6129

CHAPTER 13 CASE

CASE NO. 04-43755 NCD

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on August 24, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Denise D. Day
301 Bluff Road
Carver, MN 55315

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Paul E. Ross
Ross & Norton
287 Marschall Rd Ste 203-A
Shakopee, MN 55379

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 24th day of August, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

Denise Darsell Day
SSN XXX-XX-6129

Debtor.

CASE NO. 04-43755 NCD

This Chapter 13 Case came on before the Court on September 2, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed August 17, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court